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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------|------------------|
| 10/766,861 | 01/30/2004 | Mark M. Levy | 26180 | 3919 |
| 7590 | | 02/23/2007 | | |
| Dr. Mark Levy 34 Etzion Street RaAnana, 43563 ISRAEL | | | EXAMINER LAM, ANN Y | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1641 | |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 31 DAYS | | 02/23/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/766,861 | Applicant(s) LEVY, MARK M. | |
| | Examiner Ann Y. Lam | Art Unit 1641 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-108 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-108 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The restriction requirement mailed on 10/24/06 and 2/23/07 are hereby vacated and replaced by the following restriction requirement.

Election/Restrictions

1.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-57, drawn to a device, classified in class 604, subclass 57
- II. Claims 58-108, drawn to a method of removing or converting a constituent-of-interest in a gastrointestinal tract, classified in class 604, subclass 500.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as a method of removing or converting or binding in a blood vessel or ex vivo.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required

because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

2.

If Applicant elects the device claims, Applicant must further elect from one of the following species.

This application contains claims directed to the following patentably distinct species: sink device for chemical conversion, sink device for mechanical conversion and sink device for electrical conversion (see claim 33). The species are distinct since they are mutually exclusive (do not overlap), and they have different design, mode of operation, function and effect because of the different ways in which material is converted, i.e., chemically, mechanically and electrically. Moreover there is no indication on the record that the inventions would have been obvious over each other within the meaning of 35 U.S.C. 103. Furthermore, there would be a serious burden on examiner if restriction is not required because the different species require a search of different materials that provide for the chemical, mechanical and electrical conversions.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-32 and 34-57 (of the device claims) are generic as to the species listed above.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

3.

If Applicant elects the device claims and chemical conversion (from subsections 1 and 2 above, respectively), or if Applicant elects the method claim (from subsection 1 above), Applicant must further elect from one of the following species.

This application contains claims directed to the following patentably distinct species: a sink material for an anabolic process; and a sink material for a catabolic process.

The species are distinct because they are mutually exclusive (do not overlap), and they have different design, mode of operation, function and effect because an anabolic process is a process of synthesis, and a catabolic process is a process of breaking down. Moreover there is no indication on the record that the inventions would have been obvious over each other within the meaning of 35 U.S.C. 103. Furthermore, there would be a serious burden on examiner if restriction is not required because the different species require a search of different materials that provide for an anabolic process and catabolic process.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-14, 17-19, 26-71, 74-76 and 82-108 are generic as to the species in this group.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations

of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

4.

If Applicant elects the device claims and chemical conversion (from subsections 1 and 2 above, respectively), or if Applicant elects the method claim (from subsection 1 above), Applicant must further elect from one of the following species.

This application contains claims directed to the following patentably distinct species: a sink material for oxidizing a constituent-of-interest; and a sink material for reducing a constituent-of-interest.

The species are distinct because they are mutually exclusive (do not overlap), and they have different design, mode of operation, function and effect because oxidation is the loss of electrons and reduction is the gain of electrons. Moreover there is no indication on the record that the inventions would have been obvious over each other within the meaning of 35 U.S.C. 103. Furthermore, there would be a serious burden on examiner if restriction is not required because the different species require a search of different materials that provide for reduction and oxidation.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-25, 28-82, 85-108 are generic as to the species in this group.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.
MPEP § 809.02(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is 571-272-0822. The examiner can normally be reached on Mon.-Fri. 10-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1641

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


ANN YEN LAM
PATENT EXAMINER 2/26/07